IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 349 OF 2006

IN

SUIT NO.3420 OF 2005

Rasika Manikchand Dhariwal
& Anr. .. Plaintiffs.

vs.

Manikchand and Sons
(I) Pvt. Ltd., .. Defendants.

Mr. Salil Shah i/by Lega Apex for plaintiffs.
Mr. Jishnu Saha, Dr. Gobind Lal, Mr. Sandip Agarwal and G. Misquitta i/by Mahendia PATEL & Associates for Defendants.

CORAM : S.U.KAMDAR, J.

DATE : 10th February, 2006.

P.C.

. Motion called out and heard finally.

2. The present application has been moved by the defendants for vacating the ad-interim order dated 24.1.2006 passed by me. The order was obtained on the representation that the defendants are duly served. An affidavit of service dated

23.1.2006 was filed in this Court. The said affidavit of service in para 2 states as under :-

> "2. In view of the above circumstances I say that the notice dated 16.1.2006 alongwith copies of the plaint, notice of motion and affidavit in support of notice of motion is served to the defendants."

3. However, the learned advocate for the defendants has pointed out that in fact as on 23.1.2006 there is no service. An affidavit of service does not contain any acknowledgement of the defendant indicating that the notice was duly served on the defendants. It is clear from the aforesaid position that a false affidavit of service was filed in this Court on 23.1.2006 and the Court was led to believe that there was a valid and proper service on the defendants and the ad-interim order was obtained. In the light of the fact that there was no service on the defendants, I vacate the ad-interim order dated 24.1.2006. However, it is made clear that it will be open to the plaintiff to apply for fresh ad-interim order they deem fit and proper but the same should be only after notice to the advocates for the defendants. Motion is disposed of accordingly. No order as to costs.